

# The Planning Series: 10 - Environmental Impact Assessment

Quick Guide

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## What are environmental impact assessments?

Environmental assessment is a procedure that ensures that the **environmental implications of decisions** are taken into account before the decisions are made. Environmental assessments for **individual projects**, such as a dam, motorway, airport or factory, are known as **Environmental Impact Assessments (EIAs)**. EIAs assess the possible impact – positive and negative – that a proposed project may have on the environment and this information is submitted to the **Local Planning Authority (LPA)** or the Welsh Government<sup>1</sup> in the form of an **Environmental Statement (ES)** in order for it to be considered alongside a planning application.

## When is an EIA required?

An **EIA must be prepared** for certain types of development to comply with *European Union Directive 2011/92/EU* also known as the **EIA Directive**. The requirement to carry out an EIA on certain planning proposals is contained within section 71A of the *Town and Country Planning Act 1990*, the *Town and Country Planning Environmental Impact Assessment (England and Wales) Regulations 1999*<sup>2</sup> and in subsequent amending regulations. Different regulations apply to projects which may require assessment under the Directive but are exempt from the town and country planning system in Wales. For example land drainage works, forestry works and marine fish farming.

In general an EIA will be needed for projects likely to have significant effects on the environment by virtue of their nature, size or location. Whether or not a particular development requires an EIA to be carried out depends on the nature of the development. An EIA is compulsory for major types of development listed in **Schedule 1** of the 1999 regulations (known as Schedule 1 developments), an overview of which is listed in the Appendix.

**Schedule 2** indicates types of other developments for which an EIA is required when certain thresholds and criteria are met.

**Changes or extensions** to Schedule 1 or Schedule 2 developments which may have significant adverse effects on the environment also fall within the scope of the Regulations.<sup>3</sup>

<sup>1</sup> When an application is called-in or is decided on appeal.

<sup>2</sup> *Town and Country Planning Environmental Impact Assessment (England and Wales) Regulations 1999*, SI 1999/293 [accessed 19 October 2012]

<sup>3</sup> Welsh Office Circular, Circular 11/99, *Environmental Impact Assessment (EIA)*, 1999 [accessed 23 October 2012]

## Procedures for establishing whether or not an EIA is required

The determination of whether or not an EIA is required for a particular development proposal can take place at a number of different stages:

- The **developer may decide** that an EIA is required and will submit an ES with the planning application;
- The developer may, before submitting any planning application, **request a screening opinion** from the local planning authority;
- The local planning authority may determine that an EIA is required **following receipt of a planning application**;
- The Welsh Ministers may also determine that an EIA is required for an application that has been **called in**<sup>4</sup> for their determination or is before them on **appeal**; or
- The Welsh Ministers may direct that an EIA is required **at any stage** prior to the granting of consent for particular development.<sup>5</sup>

If the need for an EIA only arises after the planning application has been submitted, consideration of the application will be **suspended** pending submission of an ES.

## What happens to planning applications without an accompanying ES?

If the LPA receives a planning application for what appears to be a Schedule 1 or Schedule 2 development **without an accompanying ES**, it must first check for any screening opinion it may have adopted. If no screening opinion exists, the LPA must **adopt “an opinion”** explaining whether or not an EIA is required:

- If an **EIA is not required**, a screening opinion explaining this should be adopted and placed on Part I of the planning register with the planning application; or
- If an **EIA is required**, the LPA must notify the applicant, giving full reasons for its view, and a copy of the notification must then be placed on Part I of the planning register.

An applicant who still wishes to continue with the application must reply within three weeks or the application will be deemed to have been **refused**. The reply should indicate the applicant's **intention** either to provide an ES or to ask the Welsh Ministers for a screening direction, in which case the LPA should **suspend consideration** of the planning application. No appeal to the Welsh Ministers is possible against such a deemed refusal.

## What is Screening?

Determination **by the LPA** of whether a development needs an EIA is known as a '**screening opinion**' and can be undertaken before or after a planning application is submitted. Developers who are in doubt about whether an EIA would be required can request a screening opinion from the LPA prior to submission of their planning application. The request should include a plan indicating the proposed location of the development, a brief description of the nature and purpose of the proposal and its possible environmental effects, giving a broad indication of their likely scale.

<sup>4</sup> Further details are contained in **Quick Guide: Call-in of planning applications**

<sup>5</sup> *ibid*

On receipt of the request, the LPA will consider whether the proposed development is a Schedule 1 or Schedule 2 development that is likely to have significant effects on the environment taking into account factors such as nature, size or location, and the **selection criteria** in **Schedule 3** of the regulations. Schedule 3 identifies three broad criteria which should be considered:

- The characteristics of the development (size, use of natural resources, quantities of pollution and waste generated;
- The environmental sensitivity of the location; and
- The characteristics of the potential impact (magnitude and duration).

The LPA must adopt its screening opinion within three weeks of receiving a request. A copy of the relevant documents must be made available for public inspection for two years at the place where the planning register<sup>6</sup> is kept, or transferred to Part I of the register<sup>7</sup> if a planning application is subsequently made for the development.

Developers may **appeal** to the Welsh Ministers for a '**screening direction**' where they **disagree with a LPA's decision** to adopt a screening opinion that an EIA is required, or where an **authority fails to adopt any opinion** within the given time.

## What requirements do EIAs have?

Where an EIA is required, the developer must compile detailed information about the likely main environmental effects a project may have. To help the developer, under the *Environmental Information Regulations 1992*<sup>8</sup>, public bodies (known as '**the consultation bodies**') must make available any relevant environmental information in their possession.

The 1992 regulations require the following information to be provided in an ES:

- Description of the development;
- Outline of main alternatives and indication of main reason for choice;
- Description of aspects of the environment likely to be significantly affected by the development;
- Description of the likely significant effects of the development on the environment;
- Description of measures to prevent, reduce and where possible offset any significant adverse effects;
- A non-technical summary of the information; and
- Indication of any difficulties encountered in compiling the information.

Developers should obtain a formal opinion from the **LPA** as to what should be included in the ES (a '**scoping opinion**'). This allows the developer to be clear about what the LPA considers the main effects of the development are likely to be and, therefore, the topics which the ES should focus on.

The LPA must send the planning application and ES to the **Welsh Ministers**, and also forward the application to any **consultation body** which has not received a copy directly from the applicant. The ES and the planning application must be **publicised** and the public given the opportunity to submit their views on the application.

<sup>6</sup> Each LPA holds a planning register that contains details concerning all planning applications and decisions, as well as documents associated with the applications. Most LPAs also have an online register where these documents can be viewed.

<sup>7</sup> Section 69 of the *Town and Country Planning Act 1990* requires a two part register of planning application to be retained for public inspection, whereby Part 1 refers to application forms, plans and supporting information; and Part 2 refers to the plans and decision notice following determination.

<sup>8</sup> *SI 1992/3240*, as amended by *SI 1998/1447*

## How is the Environmental Statement taken into account?

The LPA has **16 weeks** from the date of receipt of the ES to determine the planning application, instead of the normal 8 weeks from the receipt of the planning application. The LPA must seek the views of the **consultation bodies**, which include the Countryside Council for Wales, the Environment Agency Wales and the Welsh Ministers.<sup>9</sup> **The LPA or the Welsh Ministers<sup>10</sup> must take account of the ES, together with any other information, comments and representations made on it, in deciding whether or not to give consent for the development.** Where an ES reveals that a development would have an adverse impact on the environment it does not automatically follow that planning permission will be refused. If permission is granted, conditions may be attached that include mitigation measures that can be based on the ES.

The LPA must **inform the public** and the **Welsh Ministers** of the outcome of its decision-making and give the main reasons why the decision was made. If the decision has not been made after 16 weeks, the applicant may **appeal** to the Welsh Ministers against non-determination.

## European Commission proposals for a revision to the Directive

On 26 October 2012 the European Commission published proposals for a revision to the Directive. The Commission states that the proposals will correct shortcomings in the Directive, reflect on-going environmental and socio-economic changes and challenges and align the Directive with the principles of smart regulation. The proposals will be the subject of negotiation and discussion between the European Council and Parliament. The requirements of the existing Directive will remain in place until the proposals are agreed by the institutions of the EU and transposed into law in Wales.

<sup>9</sup> From 1 April 2013 the Countryside Council for Wales and the Environment Agency Wales will be replaced by Natural Resources Wales

<sup>10</sup> When an application is called-in or is decided on appeal.

## Appendix

### Overview of Schedule I development descriptions

The following is an overview Schedule I developments, full descriptions of developments can be found in **Schedule 1** of the *Town and Country Planning Environmental Impact Assessment (England and Wales) Regulations 1999*.

1. Crude oil refineries;
2. Thermal and nuclear power stations and other reactors;
3. Installations for the reprocessing of irradiated nuclear fuel;
4. Integrated works for the initial smelting of cast-iron and steel; and installations for the production of non-ferrous crude metals;
5. Installations for the extraction, processing and transformation of asbestos and products containing asbestos;
6. Integrated chemical installations;
7. Construction of lines for long-distance railway traffic, airports with a runway of 2,100 metres or more, motorways and express roads, a new road with four or more lanes;
8. Inland waterways and ports which permit vessels of over 1,350 tonnes; trading ports, piers and outside ports;
9. Waste disposal installations for incineration, chemical treatment, or landfill of hazardous waste;
10. Waste disposal installations for incineration, chemical treatment, or landfill of non-hazardous waste (capacity greater than 100 tonnes per day);
11. Groundwater abstraction or artificial groundwater recharge schemes;
12. Works for the transfer of water resources, other than piped drinking water, between river basins;
13. Waste water treatment plants;
14. Extraction of petroleum and natural gas for commercial purposes;
15. Dams and other installations designed for the holding back or permanent storage of water;
16. Pipelines for the transport of gas, oil or chemicals;
17. Installations for the intensive rearing of poultry or pigs;
18. Industrial plants for the production of pulp from timber or similar fibrous materials; the production of paper and board;
19. Quarries and open-cast mining; and
20. Installations for the storage of petroleum, petrochemical or chemical products.

## Further information

For further information about **Environmental Impact Assessments**, please contact **Nia Seaton** ([Nia.Seaton@Wales.gov.uk](mailto:Nia.Seaton@Wales.gov.uk)), Research Service.

See also:

- **SI 1999/293, *Town and Country Planning Environmental Impact Assessment (England and Wales) Regulations 1999***
- **Welsh Office Circular, Circular 11/99, *Environmental Impact Assessment (EIA), 1999***

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